



January 7, 2004

OKLAHOMA BULLETIN NO. OK210-4-1**SUBJECT: ENG – Working with Floodplain Boards**

Purpose: To provide guidance on Wetland Reserve Program and other NRCS activities in floodplains.

Expiration Date: September 30, 2004

The NRCS in Oklahoma received an official legal opinion from the USDA, Office of General Counsel regarding Wetland Reserve Program (WRP) activities in floodplains. To summarize the opinion, "The WRP is not subject to state or local regulation by floodplain zoning authorities because Congress has not made the WRP subject to such regulation."

This legal opinion does not alleviate NRCS's responsibility regarding the impacts of WRP or other activities in floodplains. Executive Order 11988, entitled "Floodplain Management" and 7 CFR Part 650.25 are the agency's guiding documents for work in floodplains. Agency procedures and guidelines in 7 CFR Part 650.25 provides the NRCS regulations for complying with EO 11988. Care and sound conservation planning is vital when working in and around floodplains. Determination of potential effects on the 100-year flood elevation must be considered and efforts employed that limit such effects.

Based on the legal opinion, WRP easement contracts (30-year and perpetual) do not require local floodplain permits. However, for sites in or near urban areas or in areas where detailed flood analyses have been completed, activities should be coordinated with the local floodplain manager. This only applies to easement contracts. For 10-year WRP cost share restoration agreements, the landowner is responsible for all necessary permits, including floodplain permits, if applicable.

For WRP easement contracts, the District Conservationist will notify the local floodplain board by letter (sample attached) advising them of the location where work will take place and the general time frame of construction activities. Since the local floodplain board is the point of contact for citizens inquiring about activity in the floodplain, this letter is meant to keep the local floodplain board informed as to the WRP construction activities and to direct further inquiries to the local NRCS office.

Other activities for which NRCS may provide technical assistance that may be subject to floodplain permitting include (but are not limited to): excavated and embankment ponds, grade stabilization structures, structures for water control, and fences. District Conservationists with local floodplain management boards are expected to know the

permitting regulations of said boards. For a current list of local floodplain management boards, visit: http://www.owrb.state.ok.us/hazard/fp/pdf_fp/fpa_list.pdf or the OWRB home page at: <http://www.owrb.state.ok.us>.

The NRCS does not make floodplain determinations. The Federal Emergency Management Agency (FEMA) is the federal agency responsible for making floodplain determinations. FEMA produces Flood Insurance Rate Maps (FIRMs) for areas that are participating in the National Flood Insurance Program. NRCS will use the FIRMs to determine if conservation practices for which we are providing technical assistance are located within or near the mapped floodplain. If so, NRCS will advise the landowner of applicable permits. Technical assistance in advance of receiving a permit will be limited to that needed for the permit application process.

Each county with FIRMs available has been provided copies for their county. If maps cannot be located for your county, they should be available for review at your local community map repository site. Typically, this is your local planning, zoning, or engineering office.

For offices with no local floodplain management boards, permits will not be required; however, NRCS still has a responsibility as outlined in 7 CFR Part 650.25 described above.

Leslie R. Conner, Acting

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Attachment

DIST: AE